

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5<sup>th</sup> day of April, two thousand sixteen.

PRESENT:

ROBERT A. KATZMANN,  
*Chief Judge,*  
RICHARD C. WESLEY,  
DENNY CHIN,  
*Circuit Judges.*

AIHONG LU,  
*Petitioner,*

v.

LORETTA E. LYNCH, UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

15-884  
NAC

FOR PETITIONER: Gary J. Yerman, New York, New York.

FOR RESPONDENT: Benjamin C. Mizer, Principal Deputy  
Assistant Attorney General; Kohsei  
Ugumori, Senior Litigation Counsel;  
Jesse Lloyd Busen, Trial Attorney,  
Office of Immigration Litigation,  
United States Department of Justice,  
Washington, D.C.

1       UPON DUE CONSIDERATION of this petition for review of a  
2 Board of Immigration Appeals ("BIA") decision, it is hereby  
3 ORDERED, ADJUDGED, AND DECREED that the petition for review is  
4 DENIED.

5       Petitioner Aihong Lu, a native and citizen of the People's  
6 Republic of China, seeks review of a March 9, 2015 decision of  
7 the BIA affirming an August 12, 2013, decision of an Immigration  
8 Judge ("IJ") denying Lu's application for asylum, withholding  
9 of removal, and relief under the Convention Against Torture  
10 ("CAT"). *In re Aihong Lu*, No. A205 883 172 (B.I.A. Mar. 9,  
11 2015), *aff'g* No. A205 883 172 (Immig. Ct. N.Y. City Aug. 12,  
12 2013). We assume the parties' familiarity with the underlying  
13 facts and procedural history in this case.

14       We review both the IJ's and the BIA's opinions "for the sake  
15 of completeness." *Wanghuck v. DHS*, 448 F.3d 524, 528 (2d Cir.  
16 2006). The applicable standards of review are well  
17 established. See 8 U.S.C. § 1252(b)(4)(B); *Xiu Xia Lin v.*  
18 *Mukasey*, 534 F.3d 162, 165-66 (2d Cir. 2008). For asylum  
19 applications like Lu's, governed by the REAL ID Act, the agency  
20 may, "[c]onsidering the totality of the circumstances," base  
21 a credibility finding on inconsistencies in an applicant's

1 statements and other record evidence "without regard to  
2 whether" they go "to the heart of the applicant's claim."

3 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 163-64.

4 The IJ reasonably relied on the discrepancies among Lu's  
5 testimony, passport, and medical reports. 8 U.S.C.  
6 § 1158(b)(1)(B)(iii). Lu testified that she visited her  
7 injured son on December 9, 2009, the day after he was first  
8 hospitalized. Her passport contradicted this testimony; it  
9 showed she was not in China at any point between her son's injury  
10 and his second hospitalization on December 20, 2009. Lu's  
11 testimony did not resolve the discrepancy. She testified that  
12 she could not remember when she returned to China, but that does  
13 not explain why she initially said she was with her son on  
14 December 9, 2009, or her later statement that she was with him  
15 in the hospital at some point. The IJ was not required to credit  
16 this explanation because it conflicted with medical records  
17 showing that any hospitalization occurred in the period Lu was  
18 outside China. *Majidi v. Gonzales*, 430 F.3d 77, 80-81 (2d Cir.  
19 2005). These inconsistencies undermined the basis of Lu's  
20 claim—that she wanted to have a second child because her son  
21 was severely injured—as well as the validity of the medical

1 records showing her son's hospitalization. *Zhou Yun Zhang v.*  
2 *U.S. INS*, 386 F.3d 66, 74 (2d Cir. 2004), *overruled on other*  
3 *grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296  
4 (2d Cir. 2007).

5 Considering the above inconsistencies, the "totality of  
6 the circumstances" supports the IJ's adverse credibility  
7 determination. 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin*,  
8 534 F.3d at 167. That determination is dispositive because Lu's  
9 claims for asylum, withholding of removal, and CAT relief were  
10 all based on the same factual predicate. *Paul v. Gonzales*, 444  
11 F.3d 148, 156-57 (2d Cir. 2006).

12 For the foregoing reasons, the petition for review is  
13 DENIED. As we have completed our review, any stay of removal  
14 that the Court previously granted in this petition is VACATED,  
15 and any pending motion for a stay of removal in this petition  
16 is DENIED as moot. Any pending request for oral argument in  
17 this petition is DENIED in accordance with Federal Rule of  
18 Appellate Procedure 34(a)(2), and Second Circuit Local Rule  
19 34.1(b).

20 FOR THE COURT:  
21 Catherine O'Hagan Wolfe, Clerk